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December 7, 2004

BY HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104



Re: Proposed Revisions to the Price Regulation and Local Competition Plan; Docket
No. 28590

Dear Mr. Thomas:

Enclosed herewith for filing are the original and ten copies of AT&T Communications of the South Central States, LLC's Reply to Comments on the Revised ATRP Filed by BellSouth Telecommunications, Inc. and the Non-BellSouth ILECs in the above-referenced matter.

Very truly yours,

Riley W. Roby

RWR:dpe
Enclosures

cc: Counsel of Record

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In Re: Proposed Revisions to the)	
Price Regulation and Local)	Docket No. 28590
Competition Plan)	

**AT&T REPLY
TO COMMENTS ON THE REVISED ATRP FILED BY
BELLSOUTH TELECOMMUNICATIONS, INC.
AND THE NON-BELLSOUTH ILECS**

AT&T Communications of the South Central States, LLC ("AT&T"), pursuant to the Commission's scheduling order dated November 5, 2004, submits these reply comments to the initial comments filed on behalf of BellSouth Telecommunications, Inc. ("BellSouth") and the non-BellSouth ILECs (the "Independents" or "ICOs").

I. Access Charges Must Be Reduced To Cost Based Levels Because They Are Discriminatory And Provide BellSouth An Undue Competitive Advantage

Intrastate switched access charges, as they are currently applied by BellSouth, discriminate against traditional providers of long distance services because BellSouth charges interexchange carriers substantially more than it charges other carriers and itself for the identical use of the same facilities. The transport and termination functions BellSouth performs to terminate its own local calls or calls from a wireless carrier or from a competitive local exchange carrier (CLEC) are the same functions BellSouth performs when it originates or terminates intrastate long distance calls for AT&T and other long distance carriers. However, BellSouth discriminates against long distance carriers by charging them significantly higher access rates while charging wireless carriers and CLECs much lower interconnection rates. There is no justification for charging different rates for the identical use of the local exchange network.

Since the inception of intrastate switched access charges, BellSouth has enjoyed the competitive advantage of charging its competitors excessive rates for access services. Initially, this competitive advantage was counterbalanced by BellSouth being precluded from providing interLATA toll services. Indeed, access charges were specifically designed to replace the support for local exchange service that BellSouth lost as a result of its inability to provide interLATA services. Now that BellSouth has been allowed to compete in the long distance market, it is no longer appropriate to allow BellSouth to charge its competitors high access rates, i.e., rates that greatly exceed the cost of providing the service. All competitors – BellSouth, CLECs and wireless providers – should be placed on an equal footing if fair competition is going to continue to develop in Alabama.

II. The AARF Is An Unlawful Attempt To Create A Discriminatory Universal Service Fund

As discussed above, intrastate switched access charges are a significant source of subsidy used to support basic local exchange service rates. The proposed Alabama Access Reduction Fund (“AARF”) is an attempt by the ICOs to maintain current subsidy levels in a market with declining toll usage. A contributing cause to the decline in toll usage (and thus access minutes of use) is competition from wireless providers. Wireless providers are able to offer “all distance” calling packages at low rates because they are not required to pay access charges.¹ This is another reason switched access charges should be reduced to cost based levels. The problem with the AARF proposal is that it discriminates against interexchange carriers (“IXCs”) by 1) requiring that contributions to the fund be made only by IXCs and 2) prohibiting anyone other than the ICOs from

¹ Wireless providers do not pay access for intra-MTA (Major Trading Area) calls. The Birmingham MTA (MTA # 29) covers most of Alabama as well as portions of Tennessee.

drawing from the fund regardless of how successful a CLEC may be in winning over local exchange customers.

The Independents try to get around the discriminatory aspects of their proposal by arguing that the proposed AARF “simply restructures the manner in which providers of interexchange services pay existing access charges”.² The Independents can put all the window dressing on their proposal that they wish and they can apply any labels that sounds good to them, but they cannot deny that their proposal is taking implicit subsidies from access service rates and making those subsidies explicit in the form of their proposed fund. The purpose of such a fund is to maintain universal service in Alabama. State universal service funds are required to be nondiscriminatory and contributed to by *all* providers of communications services:

A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. *Every* telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis... (emphasis added).³

Likewise the ICOs’ attempt to distinguish the FCC’s decision in the *Western Wireless*⁴ case is unpersuasive. The Kansas case was an attempt to establish a fund based (in part) on a reduction of access charges, just as the ICOs propose for Alabama. In addition, distributions from the Kansas fund were to be made only to ILECs.⁵ The

² Comments of the Non-BellSouth ILECs, p. 6.

³ Telecommunications Act of 1996, Section 254(f).

⁴ ⁴ *In the Matter of Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, Memorandum Opinion and Order released August 28, 2000.

⁵ *Id.*, at para. 3.

proposed AARF is the exact type of plan for which the FCC indicated that it was providing guidance⁶ by the publication of its decision.

The Commission should reject the proposed AARF for inclusion in the Revised ATRP and establish a separate proceeding to consider a “toll centric” alternative as discussed by AT&T in its initial comments and in response to the Staff request at the intercarrier compensation workshop.

III. Any Plan That Provides BellSouth Further Regulatory Flexibility Should Include A Wholesale Provision That Guarantees The Availability Of Local Switching And High Capacity Loops and Transport At Just And Reasonable Rates.

To the extent that competition has developed at all in Alabama, it is because of the availability of unbundled network elements at cost based rates, and particularly the availability of UNE-P. After taking advantage of how well UNE-P has worked in order to gain section 271 relief, BellSouth has worked hard to eliminate UNE-P as a viable means of market entry for CLECs. Because of recent actions at the federal level, the future availability of UNE-P at reasonable rates is uncertain at this juncture.

If this Commission is going to make a decision regarding further regulatory flexibility for BellSouth based on the development of competition from 1996 to the present, it must recognize that, by far, UNE-P has been the choice of market entry most often used by CLECs. It also must have a fundamental understanding of the impact the new federal rules will have on the continued development of local competition in the future.

It is clear from the past that if local competition is going to continue to develop in Alabama, UNE-P must be available at just and reasonable rates. The Commission cannot

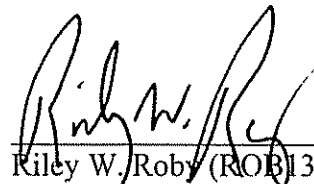
⁶ *Id.*, at para. 7.

assure that a relaxation of BellSouth's price regulation plan satisfies the public interest unless it can be assured that CLECs have access to the UNEs that underlie local competition at just and reasonable rates. Therefore, any plan that the Commission considers should include a wholesale provision that guarantees access to local switching and high capacity loops and transport at just and reasonable rates.

CONCLUSION

Based on the foregoing reasons, AT&T urges the Commission to enter an order that rejects any new pricing flexibility for BellSouth. Alternatively, any new pricing flexibility that is approved for BellSouth must include a wholesale provision guaranteeing the availability of local switching and high capacity loops and transport at just and reasonable rates. In addition, the Commission should reject the proposed AARP as being contrary to applicable law.

Respectfully submitted this 7th day of December 2004.



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following individuals in this cause by placing the same in the U.S. Mail, postage prepaid and properly addressed this 7th day of December 2004.

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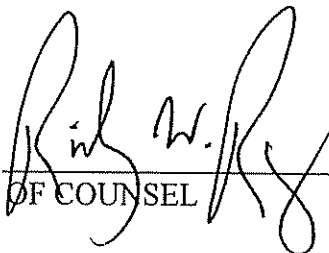
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